

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA, :

Plaintiff,

Case No. 3:08-cr-126  
Also 3:13-cv-009

-vs-

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

JOSE JESUS VILLALBA, :

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATIONS**

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The Court has reviewed the Second Supplemental Report and Recommendations of United States Magistrate Judge Michael R. Merz (Doc. No. 111), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired on May 30, 2014, hereby ADOPTS said Report and Recommendations.

It is therefore ORDERED that sub-claims 3 and 7 of Defendant's Motion to Vacate under 28 U.S.C. § 2255 be dismissed with prejudice. In accordance with the Court's prior Decision and Entry Adopting in Part and Rejecting in Part the Magistrate Judge's recommendations as to sub-claims 1, 2, 4, 5, 6, and 8, the whole Motion to Vacate is dismissed with prejudice. The Court finds that reasonable jurists would not disagree with this conclusion and denied Defendant a certificate of appealability. The Court further certifies to the Court of Appeals for the Sixth

Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

July 24, 2014.

A handwritten signature in black ink, appearing to read 'Walter Herbert Rice', written over a horizontal line.

Walter Herbert Rice  
United States District Judge